

## Kerry Murphy

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**From:** Katie Lasky  
**Sent:** Tuesday, December 27, 2016 12:52 PM  
**To:** 'Ledbetter, Tracey'; Kerry Murphy  
**Cc:** 'Jurkiewicz, David <DJurkiewicz@boselaw.com> (DJurkiewicz@boselaw.com)'; 'Vink, Paul'; McCarter, Jason; 'Jake Airey'; 'Kathleen DeLaney'; 'cfelder@lawla.com'; Coman, Matthew  
**Subject:** RE: Red Barn v. NextGear conference with magistrate and deadlines

Thanks, Tracey. Hope you had a nice holiday as well. This proposal as to the per diem damage calculation for the named Plaintiffs is acceptable reserving Plaintiffs' rights to seek the additional data points as to the whole class. Also, as to the deadlines, Plaintiffs are amenable to moving certain pretrial deadlines, including the January 16<sup>th</sup> summary judgment deadline, but cannot consent to an extension of the trial date. Hopefully the Magistrate can provide some guidance on that issue tomorrow.

Katie

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**From:** Ledbetter, Tracey [mailto:Tracey.Ledbetter@sutherland.com]  
**Sent:** Tuesday, December 27, 2016 11:04 AM  
**To:** Kerry Murphy  
**Cc:** Katie Lasky ; 'Jurkiewicz, David (DJurkiewicz@boselaw.com)'; 'Vink, Paul' ; McCarter, Jason ; 'Jake Airey' ; 'Kathleen DeLaney' ; 'cfelder@lawla.com'  
**Subject:** RE: Red Barn v. NextGear conference with magistrate and deadlines

Hi Kerry,

I hope you had a nice Christmas holiday. We've done some sampling and it appears that a per diem interest calculation would probably be favorable, but not material, to the named Plaintiffs' damage claims. However, we are not yet in a position to determine the materiality of such a stipulation as to a potential class. Therefore, to resolve the present discovery dispute, which only involves discovery on the named Plaintiffs' claims, NextGear is willing to stipulate to a per diem interest calculation for the three named Plaintiffs. Both parties would reserve their rights as to the class, in the event certification is granted; in that event, NextGear would have the right to provide additional discovery, to object, or to offer to stipulate as to the whole class.

Please let us know if this compromise is acceptable to Plaintiffs – if so, we can take it off the list for the submission to the Magistrate Judge at 4 pm.

Thanks,  
Tracey

**Tracey K. Ledbetter** | Counsel | 404.853.8123

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**From:** Kerry Murphy [mailto:KMurphy@jonesswanson.com]  
**Sent:** Friday, December 23, 2016 2:47 PM  
**To:** Ledbetter, Tracey  
**Cc:** Katie Lasky; 'Jurkiewicz, David <DJurkiewicz@boselaw.com> (DJurkiewicz@boselaw.com)'; 'Vink, Paul'; McCarter,

Jason; 'Jake Airey'; 'Kathleen DeLaney'; 'cfelder@lawla.com'

**Subject:** RE: Red Barn v. NextGear conference with magistrate and deadlines

Tracey- To clarify my below proposal, we would propose that the parties stipulate to a per diem calculation of damages. Per diem, not pro rata, was the term used by Mr. Galema at the 30(b)(6). Thank you.

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**From:** Kerry Murphy

**Sent:** Friday, December 23, 2016 12:49 PM

**To:** 'Ledbetter, Tracey' <[Tracey.Ledbetter@sutherland.com](mailto:Tracey.Ledbetter@sutherland.com)>

**Cc:** Katie Lasky <[KLasky@jonesswanson.com](mailto:KLasky@jonesswanson.com)>; Jurkiewicz, David <[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>

(<[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>) <[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>; Vink, Paul <[PVink@boselaw.com](mailto:PVink@boselaw.com)>; McCarter, Jason

<[Jason.McCarter@sutherland.com](mailto:Jason.McCarter@sutherland.com)>; 'Jake Airey' <[jairey@shergarner.com](mailto:jairey@shergarner.com)>; 'Kathleen DeLaney'

<[KDeLaney@delaneylaw.net](mailto:KDeLaney@delaneylaw.net)>; 'cfelder@lawla.com' <[cfelder@lawla.com](mailto:cfelder@lawla.com)>

**Subject:** RE: Red Barn v. NextGear conference with magistrate and deadlines

Tracey- Thank you for your email. Yes, we anticipate raising the issue discussed on Tuesday relating to damages information. Based on Mr. Galema's 30(b)(6) testimony, we would propose that the parties stipulate to a pro rata calculation of damages (relating to interest charged between the floorplan date and date of advance) for the named plaintiffs and, in the event that a class is certified, across the proposed class. If we are not able to reach a stipulation, we will be seeking the additional data points that Mr. Galema testified are necessary to calculate those damages on a non pro rata basis and are contained in NextGear's Discover system. We are happy to discuss this next week prior to the call with the Magistrate.

We will also raise the training materials as an outstanding deficiency, although we understand that you all do intend to produce those when you are able.

Regarding the additional scheduling issues you raise below, we are fine with adding in a settlement conference within 14-30 days after class certification is decided. However, we do not think additional changes to the scheduling order are necessary at this time so we would like the other deadlines to remain as is. Thank you, and happy holidays to you as well.

Best,  
Kerry

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**From:** Ledbetter, Tracey [<mailto:Tracey.Ledbetter@sutherland.com>]

**Sent:** Friday, December 23, 2016 10:06 AM

**To:** Kerry Murphy <[KMurphy@jonesswanson.com](mailto:KMurphy@jonesswanson.com)>

**Cc:** Katie Lasky <[KLasky@jonesswanson.com](mailto:KLasky@jonesswanson.com)>; Jurkiewicz, David <[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>

(<[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>) <[DJurkiewicz@boselaw.com](mailto:DJurkiewicz@boselaw.com)>; Vink, Paul <[PVink@boselaw.com](mailto:PVink@boselaw.com)>; McCarter, Jason

<[Jason.McCarter@sutherland.com](mailto:Jason.McCarter@sutherland.com)>

**Subject:** Red Barn v. NextGear conference with magistrate and deadlines

Hi Kerry,

Can you please let me know what plaintiffs anticipate raising with the magistrate next week so that we can prepare our written submission? I believe the discussion at the 30(b)(6) deposition related to damages information, but I wanted to make sure we're on the same page.

I understand that you all also spoke about potentially proposing broader changes to the case management plan when we speak with the magistrate judge. Here are our tentative thoughts about an amended schedule, though of course we'd like to get your input and the magistrate's reaction before proposing anything:

Motion and Trial Deadlines

- Settlement conference (not scheduled): Within 14-30 days after class cert decided. (Of course, we can always talk sooner if we want.)
- Dispositive motions (due January 16): 45 days after M2D denied.
  - If M2D is granted with leave to re-plead, then responsive pleadings / dispositive motions would be due 45 days after amended complaint is filed.
- *Daubert* motions (due March 8): Five weeks before pre-trial conference (per below, this would be a few weeks after class cert and summary judgment are decided).
- Final witness and exhibit lists (due March 15): Four weeks before pre-trial conference.
- Pre-trial conference (April 19): Ideally no less than 60 days after the later of the class certification or summary judgment motion is decided. Note that the CMP sets earlier deadlines for identifying trial witnesses, exhibits, etc., keyed from the pre-trial conference date.
- Trial (May 8): Re-set for a sufficient time to accommodate the foregoing deadlines. Depending on the Court's availability and the timing of rulings, likely no earlier than mid-fall of 2017.

Expert Discovery Deadlines: These can remain as scheduled.

- January 10: Plaintiffs' expert witness disclosures due
- February 10: Defendants' expert witness disclosures due
- March 1: Close of expert discovery

Thanks, and happy holidays,  
Tracey

**Tracey K. Ledbetter** | *Counsel*

The logo for Sutherland Asbill & Brennan LLP, featuring the word "SUTHERLAND" in white capital letters on a blue rectangular background.

**Sutherland Asbill & Brennan LLP**

999 Peachtree Street, NE, Suite 2300 | Atlanta, GA 30309

404.853.8123 direct | 404.853.8806 facsimile

tracey.ledbetter@sutherland.com | www.sutherland.com

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